

Application No. 10/783,177

Page 6

**b. Remarks**

Claims 1-23 are pending in the application. Claims 1-5 and 7-20 have been allowed. Claim 6 has been rejected. Claim 17 has been objected to. Claims 6 and 17 have been amended. Claims 21-23 have been withdrawn from consideration after a Restriction Requirement.

1. Election/Restriction

In response to the Restriction Requirement interposed by the Examiner in the August 25, 2004 telephone call, Applicant affirms election with traverse to prosecute the claimed invention of Group I: Claims 1-20. Claims 21-23 have been withdrawn from further consideration by the Examiner as being drawn to a non-elected invention, and are believed to be held in abeyance until final disposition of the elected species.

Applicant traverses this restriction requirement on the grounds that examination of the groups cited, Group I, Claims 1-20, drawn to an artist's color chart, and Group II, Claims 21-23, drawn to a method of using an artist's color chart, would not impose an undue burden on the Examiner. According to MPEP §803, there must be a serious burden on the Examiner if restriction is required. It is believed that the amount of searching for the two groups, which are listed as being in the same class (434), would not be appreciably more than the search required for only one of the groups. MPEP §803 also states that if search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits.

Application No. 10/783,177

Page 7

2. Claim Objection

Claim 17 has been objected to, but has been amended to substitute the word "artist's" for the term "artist" in the last line. The objection is believed to have been obviated.

3. Rejection under §112, second paragraph

Claim 6 stands rejected under 35 USC §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter Applicant regards as the invention. Claim 6 has been amended to depend on Claim 2 rather than Claim 3. It is believed that there is sufficient antecedent basis for the limitation "the...outlined shapes" in lines 1-2 of amended Claim 17. No new matter has been introduced by this amendment.

4. Allowable Subject Matter

The Office action acknowledges that Claims 1-5 and 7-20 are directed to allowable subject matter. Claim 6 has been rewritten to overcome the rejection under 35 U.S.C. 112, second paragraph, set forth in the Office action and is believed to be in condition for allowance.

Applicant seeks to gain an auspicious allowance and has therefore voluntarily amended the claims. No new matter has been introduced by the amendments. Applicant would be pleased to supply additional information in support of this application, if needed. Applicant requests that these amendments be made of record in the case and considered by the United States Patent and Trademark Office Examiner, and that the claims as amended be allowed.

Application No. 10/783,177

Page 8

Respectfully submitted,

The Harleston Law Firm, LLC

By: Kathleen M. Harleston

Kathleen M. Harleston  
Attorney for Applicant  
Registration No. 33,398

Faxed to the USPTO on September 17, 2004

The Harleston Law Firm, LLC  
909 Tall Pine Road  
Mt. Pleasant, SC 29464  
843-971-9453 Phone  
843-971-9505 Fax  
kathleen@harlestonlawfirm.com